



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-13

SUBJECT: GEORGE C. CHACHAS, MAYOR
CITY OF ELY

A. JURISDICTION:

In his capacity as the mayor of the City of Ely, George C. Chachas is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (complaint) 06-13 received March 3, 2006 (TAB B)
- Reviewed pertinent portions of General Law for Incorporation of Cities and Towns, Chapter 266 of the Nevada Revised Statutes (TAB C)
- Reviewed Waiver of Statutory Time Requirement received April 10, 2006, and Mr. Chachas's response received May 19, 2006 (TAB D)
- Reviewed the following records of the Ely City Council meetings submitted as exhibits to the complaint (Agendas, Excerpted Minutes, TAB E):
 - January 12, 2006 Agenda, Minutes, and audio recording;
 - January 26, 2006, Agenda, Minutes, and audio recording;
 - February 9, 2006 Agenda and Minutes
- Reviewed the following documents (TAB F):
 - Hand-written "veto" dated January 26, 2006, from Mayor Chachas to Ely City Council submitted as an exhibit to the complaint;
 - Type-written "veto" dated January 26, 2006, from Mayor Chachas to Ely City Council submitted as an exhibit to the response
- Reviewed audio cassette tape, submitted by Mr. Chachas, purported to be a recording of a November 2, 2001, meeting between George Chachas, then Mayor Bob Miller, City Clerk Jim Allworth and city utility billing clerk Jolene Gardner, at Ely City Hall,

regarding business license and unpaid fees for Town & Country Motel, which is owned by Mr. Chachas

- Reviewed May 8 & 9, 2006, and June 5, 2006, transcripts of court proceedings concerning allegations of use of public office for personal benefit re: City of Ely v. Mayor Chachas (TAB G)
- Reviewed various newspaper articles related to this matter (TAB H)
- Reviewed prior relevant opinions of the NCOE (TAB I)

C. RECOMMENDATIONS:

Based on investigative activities, it is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (1)
- NRS 281.481 (2)
- NRS 281.501 (2)
- NRS 281.501 (4)

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

This Request for Opinion (complaint), submitted by Gary D. Fairman, Special Counsel, City of Ely, was received March 3, 2006. The complaint expressly alleges violations of NRS 281.481(1) and 281.481(2), and infers violations of NRS 281.501(2), and 281.501(4) by George C. Chachas, Mayor, City of Ely, as a result of the following:

On January 12, 2006, the Ely City Council considered an agenda item to hire outside counsel to collect a delinquent utility account owed by George C. Chachas. Mr. Chachas retained control of the meeting as the Mayor. Mr. Chachas argued that the City of Ely, through its City Council, should not proceed to collect the utility bill due and owing to the City of Ely from himself as a private citizen. The City Council approved the hiring of outside legal counsel to collect the debt by a 3-0 vote.

On January 26, 2006, Mr. Chachas, in his capacity as Mayor, submitted a written veto of the City Council's action taken on January 12, 2006 to approve the hiring of outside legal counsel to collect the debt he allegedly owed.

E. SUMMARY OF SUBJECT'S RESPONSE:

A "Waiver of Statutory Time Requirement" was received from Mr. Chachas on April 10, 2006. A letter from Mr. Chachas's attorney, Hector Carbajal, was received April 19, 2006, requesting until May 19, 2006, to file a formal response on behalf of his client.

The relevant substance of Mayor Chachas's response, submitted through his attorney, is as follows:

He is the victim of a political smear campaign and the desperate and vengeful efforts of the Ely City Council to wrongfully oust the Mayor from his elected position. This complaint is part and parcel of the Ely City Council's wrongful attempts to remove Mayor Chachas, and these efforts are an affront to our system of government and the rights of the people of the City of Ely to choose their Mayor.

Item No. 15, January 12, 2006, City Council Meeting Agenda, called for the authorization to seek outside legal representation for the City of Ely to resolve a delinquent utility account for the Town & Country Motel, which is owned by Mayor Chachas.

Mr. Fairman admits that, on that day, the Ely City Council approved the hiring of outside legal counsel to collect the debt by a 3-0 affirmative vote.

On January 26, 2006, Mayor Chachas submitted a written veto of the Ely City Council's January 12, 2006, vote to approve the hiring of outside legal counsel.

The agenda item in question was never properly presented to Mayor Chachas for inclusion on the official agenda for January 12, 2006. Either the Ely City Council or the Ely city staff added the item without going through the appropriate formalities for inclusion on the agenda. Consequently, Mayor Chachas was completely unaware of the hearing on the item. Nevertheless, his actions were completely warranted. Mayor Chachas is the owner of the Town & Country Motel. This is known by all members of the Ely City Council and was appropriately disclosed by Mayor Chachas when he vetoed the Ely City Council authorization to seek outside counsel.

Mayor Chachas attempted to pay for water, sewer, and landfill for over a period of one year prior to November 2, 2001, but the city clerk, Brent Hutchings, refused to accept payment. (Mr. Hutchings had set up the fees, which are variable by size and facility, without any guidelines whatsoever.) On November 2, 2001, Mayor Chachas entered into an agreement with newly elected Mayor Bob Miller, City Clerk Jim Alworth, and utility clerk Jolene Gardner. Prior to this, Mayor Chachas had been disputing the fees with former Mayor Jack Smith and the Ely City Council. At that meeting the city agreed to completely wipe out the disputed balance for utilities if Mayor Chachas would pay six months worth of back landfill fees. Mayor Chachas agreed and fully paid the amount.

Mayor Chachas was living at the motel, and it was not being used for commercial purposes. The amounts the city was charging were significantly more than other properties used for commercial purposes were being charged. Mayor Chachas continuously and repeatedly requested a standards or fee schedule from the city. Despite these requests, no such item has ever been offered by the city. At one point, Mr. Hutchins ordered the water service turned off, which created a significant burden and an undue hardship on Mayor Chachas. Mayor Chachas has attempted to pay his fees on a monthly basis with the exception of the landfill charges. On numerous occasions, City Clerk Hutchings has refused to take payment from Mayor Chachas.

Mayor Chachas should not have to pay more than what others are paying when his use is less and when the motel is not being used for commercial purposes. Mayor Chachas has received exorbitant landfill charges for a non-commercial property that have varied from as high as \$360.00 a month to as low as \$19.99 a month. It is wholly inappropriate for the city to charge him more than it charges others who are using their property for commercial purposes.

Mayor Chachas has paid his utilities since his agreement with former Mayor Miller, with the exception of the landfill charges. He has a valid dispute for that item and has attempted to pay. In fact, Mayor Chachas has paid the utility since the agreement with former Mayor Miller as it pertains to home landfill charges. However, he has disputed the commercial charges that the city has wrongfully and discriminately levied against him.

Since the filing of Mr. Fairman's complaint, Mayor Chachas has paid the disputed amount in full.

If the Ethics Commission, in its investigation of Mr. Fairman's complaint, reviews the minutes and recordings of the meetings of the Ely City Council for January 12, 2006 and January 26, 2006, it will come to but one conclusion. The actions of Mayor Chachas were not done in violation of the two provisions referenced in Mr. Fairman's complaint. Mayor Chachas's acts were warranted at all times.

It is regretful, that the Ely City Council has willfully, recklessly and possibly illegally sought the collection of unfair and discriminatory landfill charges from Mayor Chachas solely in an effort to remove him from office because of the members' personal disfavor of his having been voted in by the public instead of their political crony, former Mayor Miller. Nevertheless, the people have spoken. The voting populace elected Mr. Chachas as the Mayor of the City of Ely.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

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NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

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4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or

employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

* * * * *

8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

Factual History:

A letter dated November 14, 2005, was sent by certified mail, return receipt requested, to Mr. Chachas from City Clerk/Treasurer Jim Alworth. In the letter, Mr. Chachas was advised regarding the following:

Upon reviewing accounts for individuals/businesses owing the City of Ely a substantial amount of money, the Town & County Motel was discovered to have a balance owing of \$4,350.05.

While researching the account balance, it was noted that a meeting took place on November 2, 2001, with then Mayor Robert Miller, Jolene Gardner, Jim Alworth and Mr. Chachas to discuss the account. During the tape-recorded meeting it was agreed by the city to correct 25 months of landfill billings due to the motel being billed landfill charges at a rate of \$19.80 per month as a closed business. (The business was being treated as a closed business because the city had the water turned off for failure to pay landfill charges.)

During the meeting Mr. Chachas stated that he could have been living at the property as his residence, but without water he was unable to do so. It was agreed that the billings and penalties for the 25 months would be adjusted by charging six months of landfill at a rate of \$5.50 per month. The total amount adjusted off the account was \$901.38 for landfill and \$305.11 for penalties for a total adjustment of \$1,206.49.

There was a balance owed for water of \$226.98 and \$229.82 for sewer as of August 31, 1999, before the above-mentioned adjustments were recorded. Since that time, the motel had been billed monthly for water, sewer and landfill, with rates being applied depending on the status of the water service. Failure to pay

past due amounts on a timely basis created a monthly penalty that is also being charged to the account. The amounts due as of November 1, 2005, were as follows: Water \$702.20; Sewer \$2,996.65; Landfill \$1021.02 and Penalties \$757.28, for a total of \$4,350.05.

Although Mr. Chachas was making monthly payments in the amount of \$45.50, it was not enough to cover the monthly billing of \$189.05. Mr. Chachas was advised to make arrangements with city hall to increase his monthly installments to at least \$370.00 to get the outstanding balance paid off within the next 12 months to avoid the account being turned over for legal action.

A memorandum dated December 29, 2005, was sent to Mr. Chachas, city council members, utility board members and the city attorney's office from City Clerk/Treasurer Jim Alworth. The memorandum included the following:

A letter was sent November 14, 2005, certified mail/return receipt to Mr. Chachas, owner of the Town & Country Motel, regarding delinquent utility accounts in the amount of \$4,350.55. Mr. Chachas received and signed for the letter November 16, 2005.

Permission was requested to place this matter on the January 12, 2006, city council agenda, whereby authorization to seek outside legal representation for the City of Ely to go forward with taking this account to court for resolution since there would be a conflict with the City Attorney's office prosecuting the case.

At its regular meeting held on January 12, 2006, the Ely City Council discussed and took action on agenda item no. 6-15:

“City Council-Discussion/Action-Authorization to seek outside legal representation for the City of Ely to resolve delinquent utility account for the Town & Country Motel owned by George C. Chachas.”

The Ely City Council Meeting Minutes for January 12, 2006, report the following:

- Mayor Chachas stated that the account is in dispute. He described that November 2001 meeting between former Mayor Bob Miller, City Clerk/Treasurer Alworth, Jolene Gardner, and Mayor Chachas, and state that there was an audio tape of the meeting;
- Mayor Chachas further stated that he met all of the conditions, but the city reneged on its part. He stated that he refused to pay, and that if the city wants to go forward on this issue, the city should “take it to the State Ethics Commission”;
- Mayor Chachas requested the council members to listen to the audio tape before continuing to consider this matter;
- City Clerk/Treasurer Jim Alworth stated that Mr. Chachas received the November 14, 2005 letter. He further stated that he and city utility billing clerk Jolene Gardner reviewed the audio tape of the November 2001 meeting, and reiterated the substance of the November 14, 2005 letter;
- City Clerk/Treasurer Alworth stated the mayor's monthly billing is \$189.05 a month, but he pays \$45.50 a month;

- Councilman Bybee made the motion to approve the request to seek outside legal representation for the City of Ely to resolve the delinquent utility account for the Town & Country Motel owned by Mayor Chachas. Councilman Smith seconded the motion;
- Mayor Chachas asked for a roll call vote at which time Councilmen Bybee, Marich and Smith voted “yes”;
- The motion carried unanimously (Pursuant to NRS 266.200(1)(b), the mayor is not entitled to a vote except in the case of a tie);
- The November 14, 2005, letter, return receipt signed by Mr. Chachas and the memorandum dated December 29, 2005, were made part of the meeting record.

Immediately prior to the January 26, 2006, regular meeting of the Ely City Council, Mayor Chachas submitted to city administrative staff a written veto of the action taken by the Ely City Council at its January 12, 2006, meeting. In his four page hand-written veto, dated January 26, 2006, Mr. Chachas stated that he was “vetoing the action taken at the Ely City Council meeting held on January 12, 2006, on item 6 -15 regarding the authorization to seek outside legal representation for the City of Ely to resolve the alleged delinquent utility account for the Town & Country Motel owned by George Chachas.” He further stated that he is “the owner of the property and also the Ely City Mayor.” In the balance of the document, Mr. Chachas provided a detailed explanation of his dispute with the city regarding his delinquent account. He also asserted that the city has harassed him and discriminated against him by failing to provide a standard fee schedule.

The January 26, 2006, Minutes for the regular meeting of the Ely City Council report the following:

- Mayor Chachas and the city council discussed the mayor’s participation during item 6-15 at the January 12, 2006, meeting;
- Councilman Bybee pointed out that Mayor Chachas continued to conduct the January 12, 2006, meeting while the city council discussed the mayor’s personal business. Mr. Bybee stated that he wanted the matter placed on a future agenda to discuss whether a complaint should be filed with the Nevada Commission on Ethics;
- Mayor Chachas defended himself by stating that the city attorney was present at the meeting but didn’t advise him on the matter. Moreover, Mayor Chachas stated that he disclosed that he was “the owner and the mayor” in his written veto;
- Councilman Bybee indicated that he knew nothing about a veto and reiterated that the mayor never disclosed his ownership interest during the meeting. The councilman also reminded the mayor that the mayor found himself in similar circumstances relating to an ethics complaint filed previously against the mayor in the early 1990’s.

At its regular meeting held on February 9, 2006, the Ely City Council discussed and took action under Item no. 3-1, agenda items vetoed by the mayor brought back for discussion/action of the city council:

“City Council-Discussion/Action-Action required, for or against, Veto by Mayor George C. Chachas regarding the City Council’s decision on Discussion/Action

agenda item #6-15, regarding the authorization to seek outside legal representation for the City of Ely to resolve delinquent utility account for the Town & Country Motel owned by George C. Chachas. This agenda item was from the January 12, 2006, regular Ely City Council Meeting.”

The Minutes for the February 9, 2006, city council meeting indicate that:

- Mayor Chachas turned the gavel over to Councilman Bybee to chair the meeting as Mayor Pro Tem;
- Councilman Lampros made the motion to override the veto issued by Mayor Chachas on agenda Item 6-15 at the January 12, 2006, meeting, regarding the authorization to seek outside legal representation for the City of Ely to resolve delinquent utility account for the Town & Country Motel owned by Mayor Chachas. Councilman Marich seconded the motion. The motion carried unanimously.

As was decided at the January and February 2006 city council meetings, the City of Ely, through its special counsel, filed a lawsuit against Mayor Chachas to recover the disputed fees. The mayor failed to respond within the required time, so a court decided in favor of the city by default. The city also filed a suit to remove Mayor Chachas from office. The judge decided not to remove the mayor from office, but questioned the mayor’s ethical judgment, suggesting that this is a matter to be considered by the Commission on Ethics.

On August 21, 2006, Mr. Chachas’s attorney, Hector J. Carbajal, was notified by e-mail that the Commission would also be considering additional issues and facts specified under NRS 281.501. On September 18, 2006, a letter was sent by U.S. Mail to Attorney Carbajal’s business mailing address. The letter was sent in response to e-mail correspondence between Mr. Carbajal and Commission staff, wherein NAC 281.189 was clarified. Attorney Carbajal was informed of the following:

- The Commission’s Executive Director has authority, under NAC 281.189, to investigate any relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation to a panel of Commissioners as to just and sufficient cause.
- The Commission on Ethics revised the regulation this year. The regulation now allows the subject of a complaint an opportunity to respond to additional allegations.
- It is the policy of the Commission to extend this opportunity to respond to all of those individuals who are currently the subject of a complaint, regardless of when the complaint was filed.

On September 27, 2006, Mr. Carbajal sent an e-mail confirming that Mr. Chachas would respond to the additional issues and facts no later than October 13, 2006.

Mr. Chachas’s response to the additional issues and facts was received on October 13, 2006. Mr. Carbajal sent the response on behalf of Mayor Chachas. It stated that Mr. Chachas’s original response contains all of the facts and information responsive to these additional matters. The response stated, in part: “Mr. Chachas simply requests that . . . the commission refer to his original response when considering the newly raised and additional provisions . . .”

H. CONCLUSION:

Allegations regarding NRS 281.481(1):

Mr. Chachas has had a longstanding dispute regarding the methodology used by the City of Ely to collect business related licensing, utility, and landfill fees. By using his position as mayor to veto the council decision to appoint outside counsel, he sought an economic opportunity of avoidance of paying those fees related to the motel he owned. It appears that he departed from the faithful and impartial discharge of his public duties as mayor.

In the Commission's Opinion 00-54 (*Kenny*), the Commission established a two-pronged factual determination: (1) whether the public officer or employee sought or accepted a gift, service, favor, employment, engagement, emolument or economic opportunity; and (2) whether the gift, service, favor, employment, engagement, emolument or economic opportunity would tend improperly to influence a reasonable person in the position of the public officer or employee to depart from the faithful and impartial discharge of his public duties. In this instance, it appears that Mayor Chachas met the first prong of the test when he sought avoidance of paying the disputed fees. The second prong appears to have been met when he exercised his authority as mayor to continue avoidance of payment of the disputed fees, thereby departing from the faithful and impartial discharge of his public duties.

The Executive Director finds that credible evidence **DOES EXIST** to substantiate a potential violation of NRS 281.481(1). Accordingly, the Executive Director recommends that the panel find just and sufficient cause does exist for the Commission to hold a hearing and render an opinion regarding whether Mayor Chachas violated the provisions of NRS 281.481(1).

Allegations regarding NRS 281.481(2):

In April 1993, Mayor Chachas appeared before the Nevada Commission on Ethics in a matter documented as Opinion No. 92-33. In rendering its opinion, the Commission found that:

“Mr. Chachas did not distinguish and separate his conflicting interests ... as a private citizen and his public responsibilities as the mayor. Instead Mr. Chachas used his position of office to attempt to influence, control and dominate the city council's deliberations with respect to the question . . .” Mr. Chachas would not have been in such a position of dominance and control to further his private business interest had he been a private citizen. As a result, Mr. Chachas used his position as mayor to secure the unwarranted privilege and advantage of dominating and controlling the city council meeting in which he sought to advance his private business interests.

Mayor Chachas should have relinquished his responsibilities and role as mayor and presented his position as any other private citizen would have had to do in presenting a matter to the City Council. Mr. Chachas' failure to do so violated the provisions of NRS 281.481(2).”

Even though Mayor Chachas was apparently not cautioned by the city attorney in this instance, he had been cautioned during the previous situation that resulted in Opinion No. 92-33, when then City Attorney Dave Olsen warned Mayor Chachas “to be very careful as to whether or not you are approaching this as the Mayor of the City of Ely or as Whether you are approaching it as George Chachas private business owner . . .”

Although Mayor Chachas did not actually succeed in securing or granting the unwarranted privilege that he sought, the mere attempt could be enough to merit a violation of NRS 281.481(2) as was opined in Commission Opinion 04-77 (Boggs-McDonald), which states the following:

“In its analysis, the Commission looked to past opinions for guidance in interpreting NRS 281.481(2). While at least one prior opinion held that a public officer who merely attempts, but does not succeed, in securing or granting an unwarranted advantage does not violate NRS 281.481(2) (see *Matter of William Barrett, CEO No. 01-08A*), several members of this Commission believe that such an interpretation would be at odds with legislative intent and that merely making an attempt to obtain an unwarranted benefit would in fact bring the activity within the parameters of NRS 281.481(2).”

The Executive Director finds that credible evidence **DOES EXIST** to substantiate a potential violation of NRS 281.481(2). Accordingly, the Executive Director recommends the panel find just and sufficient cause does exist for the Commission to hold a hearing and render an opinion regarding whether Mayor Chachas violated the provisions of NRS 281.481(2) when he used his position as mayor to veto the Ely City Council’s decision to hire special counsel to pursue collection of the delinquent landfill charges owed by Mr. Chachas.

Allegations regarding NRS 281.501(2):

In the instance of the January 12, 2006, meeting, agenda item 6-15, Mayor Chachas made no disclosure of his interest in the Town & Country Motel. He simply relied upon the fact that the agenda named “George C. Chachas” as the owner as sufficient disclosure. Further, he did not abstain from participation in the agenda item discussion. In fact, his participation rose to the level of “impermissible advocacy” as described in Commission Opinion 97-07 (*Kubichek*) when Mayor Chachas made his fervent assertions regarding the disputed fees. The intent of those assertions were to guide the city council. In the Kubichek opinion, the Commission stated:

“A statement of advocacy is prohibited, even if factual, because the intent of advocacy is to get the hearer to believe the same as the speaker, and where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument but because of the speaker's position itself.”

NRS 281.501(2) instructs that it must be presumed that the independence of judgment would not be materially affected where the resulting benefit to himself or to his commitment in a private capacity to the interests of others is not greater than that accruing to any other member of the general business, profession, or occupation.

There is evidence in the record that Mayor Chachas would have benefited from participation in and the veto of the motion to hire special counsel to pursue the delinquent fees. Consequently, NRS 281.504 required him to disclose his pecuniary interest and abstain from acting upon the matter.

The Executive Director finds that credible evidence **DOES EXIST** to substantiate a potential violation of NRS 281.501(2). Accordingly, the Executive Director recommends the panel find just and sufficient cause does exist for the Commission to hold a hearing and render an opinion regarding whether Mayor Chachas violated the provisions of NRS 281.501(2).

Allegations regarding NRS 281.501(4):

According to NRS 281.501(4), the fact that Mayor Chachas is the owner of the Town & Country Motel would, in and of itself, require Mayor Chachas to sufficiently disclose his pecuniary interest before acting upon any matter pertaining to the motel. Based upon this undisputed fact, and relying on Commission Opinion 99-56 (*Woodbury*), Mayor Chachas, after disclosing sufficient information concerning his interest in his motel, should have refrained from advocating the passage or failure of the matter and should have abstained from voting or otherwise acting upon the matter.

There is evidence in the record that Mayor Chachas did not sufficiently disclose before acting upon the matter. Even then, Mayor Chachas should have determined that the independence of judgment of a reasonable person in his situation would be materially affected by his ownership of the motel. Therefore, Mayor Chachas should have refrained from advocating the passage or failure of the matter and should have abstained from voting or otherwise acting upon the matter.

The Executive Director finds that credible evidence **DOES EXIST** to substantiate a potential violation of NRS 281.501(4). Accordingly, the Executive Director recommends the panel find just and sufficient cause does exist for the Commission to hold a hearing and render an opinion regarding whether Mayor Chachas violated the provisions of NRS 281.501(4).

Prepared by: Matt C. DiOrio DATED: 11/2/06
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: 11/2/06
L. PATRICK HEARN
EXECUTIVE DIRECTOR